

Joe Smith (“Smith”) appeals from a jury conviction in Sullivan Superior Court of Class D felony auto theft and Class D felony theft. He raises two issues:

- I. Whether sufficient evidence supports his theft conviction; and,
- II. Whether the trial court’s imposition of consecutive sentences violates Indiana Code section 35-50-1-2.

We affirm.

Facts and Procedural History

On July 11, 2005, Smith met Randie Yakel (“Yakel”) in a Terre Haute bar where both were drinking. After talking for several hours and providing her a line of methamphetamine, Smith offered Yakel \$500 to drive him somewhere and to pick him up ten minutes later. Yakel agreed and met Smith a short time later at a gas station. As Yakel drove, Smith attempted to cut a hose and accidentally cut his finger.

Smith directed Yakel to the business premises of anhydrous ammonia distributor Royster-Clark where he got out of the vehicle. Yakel drove on, turned around in a driveway, and then returned a few minutes later to pick up Smith. Before getting in Yakel’s Ford Explorer, Smith placed a container in the back. Almost immediately, Yakel was overcome by fumes and drove her vehicle into a ditch less than a mile from Royster-Clark. A few hours later, a newspaper carrier found Yakel walking along the side of the road. Police later recovered a rubber hose and a gas can containing anhydrous ammonia from Yakel’s vehicle. Blood found in Yakel’s vehicle matched Smith’s DNA.

Later that morning, Marvin Harris, who lived roughly an eighth of a mile from the site of Yakel’s accident, reported that his truck had been stolen from his driveway. Two

days later, police officers in Illinois arrested Smith after he led them on a high-speed chase in Harris's truck.

On August 10, 2005, the State charged Smith with Class D felony theft and Class D felony auto theft. A jury trial commenced on June 6, 2006. The jury convicted Smith on both counts, and the trial court ordered consecutive three-year sentences. Smith now appeals.

I. Sufficiency

Smith contends that the State presented insufficient evidence to support his conviction of Class D felony theft. Our standard of review for sufficiency claims is well settled. We neither reweigh the evidence nor judge the credibility of the witnesses. Cox v. State, 774 N.E.2d 1025, 1029 (Ind. Ct. App. 2002). We only consider the evidence most favorable to the judgment and the reasonable inferences that can be drawn therefrom. Id. Where there is substantial evidence of probative value to support the judgment, it will not be disturbed. Armour v. State, 762 N.E.2d 208, 215 (Ind. Ct. App. 2002), trans. denied. A verdict may be sustained based on circumstantial evidence alone if the circumstantial evidence supports a reasonable inference of guilt. Maul v. State, 731 N.E.2d 438, 439 (Ind. 2000).

To convict Smith of theft, the State had to prove that Smith (1) knowingly or intentionally (2) exerted unauthorized control over the property of another person, specifically anhydrous ammonia from Royster-Clark, (3) with the intent to deprive Royster-Clark of any part of the property's value or use. See Ind. Code § 35-43-4-2(a) (2004).

Smith argues that there “may have been evidence that [he] possessed anhydrous ammonia, but there was no evidence whatsoever as to where that anhydrous ammonia came from.” Br. of Appellant at 16. Yakel testified that when she picked up Smith at Royster-Clark, he put a container in the back of her vehicle. Tr. p. 177. Shortly thereafter, Yakel was overcome by chemical fumes and was unable to breathe. Tr. p. 178. In addition, the Royster-Clark manager testified that the nearest place to obtain anhydrous ammonia in Sullivan County was ten miles away. Tr. p. 298. From the evidence presented, the jury could reasonably infer that Smith stole the anhydrous ammonia from Royster-Clark.

II. Consecutive Sentences

Next, Smith argues that the trial court erred when it ordered his sentences be served consecutively. Consecutive sentences cannot be imposed in the absence of express statutory authority. Mask v. State, 829 N.E.2d 932, 935 (Ind. 2005) (citing Baromich v. State, 252 Ind. 412, 416, 249 N.E.2d 30, 33 (1969)). The statute that provides such authority is Indiana Code section 35-50-1-2, which provides in relevant part:

The court may order terms of imprisonment to be served consecutively even if the sentences are not imposed at the same time. However, except for crimes of violence, the total of the consecutive terms of imprisonment, exclusive of terms of imprisonment under [Indiana Code section] 35-50-2-8 and [Indiana Code section] 35-50-2-10, to which the defendant is sentenced for felony convictions arising out of an episode of criminal conduct shall not exceed the advisory sentence for a felony which is one (1) class of felony higher than the most serious of the felonies for which the person has been convicted.

Ind. Code § 35-50-1-2(c) (2004 & Supp. 2006).

An “episode of criminal conduct” is defined as “offenses or a connected series of offenses that are closely related in time, place, and circumstance.” Ind. Code § 35-50-1-2(b). The test is whether the alleged conduct was so closely related in time, place, and circumstances that a complete account of one charge cannot be related without referring to details of the other charge. Fields v. State, 825 N.E.2d 841, 845 (Ind. Ct. App. 2005) (citing Monyhan v. State, 780 N.E.2d 1187, 1190 (Ind. Ct. App. 2003)).

Smith argues that because the theft of the anhydrous ammonia and the theft of the truck occurred within a half hour and half mile of each other, they must be considered part of the same criminal episode. As an account of each theft can be related without referring to the details of the other, these acts are not part of a single criminal episode. The trial court properly ordered Smith to serve consecutive sentences.

Conclusion

Sufficient evidence supports Smith’s conviction of Class D felony theft. The trial court’s imposition of consecutive sentences does not violate Indiana Code section 35-50-1-2.

Affirmed.

NAJAM, J., and MAY, J., concur.